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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1996

STATE OF WASHINGTON, et al.

*Petitioners,*

*vs.*

HAROLD GLUCKSBERG, M.D., COMPASSION IN DYING,  
INC., JANE ROE, JOHN DOE, JAMES POE

*Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF FOR THE SOUTHERN CENTER  
FOR LAW AND ETHICS  
AS AMICUS CURIAE IN SUPPORT OF  
THE STATE OF WASHINGTON, ET AL.**

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FOR LAW AND ETHICS  
AS AMICUS CURIAE IN SUPPORT OF  
THE STATE OF WASHINGTON, ET AL.**INTEREST OF AMICUS CURIAE**

The Southern Center for Law and Ethics is a non-profit, publicly funded, tax-exempt corporation founded in 1985 and based in Birmingham, Alabama. Paramount to the Center's purpose is to develop an understanding of the relationship between law and religion. The Center's activities include interaction and instruction with interested law students, medical students, lawyers,

physicians, and members of the academic community, publication of articles and a journal of theology and law, and providing legal counsel and filing *amicus curiae* briefs on a variety of public issues related to the Center's purposes.

The Center is particularly concerned that contemporary public policy not be based upon distorted and inaccurate interpretations of Christian history or theology. The Ninth Circuit *en banc* opinion, authored by Judge Reinhardt, which is being reviewed in this case, includes a flagrantly inaccurate and illogical discussion of suicide and the early church. The purpose of this brief is to provide the Court with a balanced appraisal of the subject of suicide and the early church, so that this Court does not repeat those errors. In order to assist the Court, numerous quotations from the Church Fathers on this topic are included.<sup>1</sup> Counsel for all parties have consented to the filing of this brief.

### SUMMARY OF ARGUMENT

Judge Reinhardt's discussion of the place of suicide in Early Christianity<sup>2</sup> contains three assumptions, which upon examination are false and illogical:

<sup>1</sup>We wish to credit Darrel W. Amundsen who assisted in the research and preparation of this brief, which draws upon his earlier works, "Suicide and Early Christian Values," in *Suicide and Euthanasia: Historical and Contemporary Themes*, B. A. Brody, ed. (Dordrecht: Kluwer, 1989), pp. 77-153; idem, *Medicine, Society, and Faith in the Ancient and Medieval Worlds* (Baltimore: Johns Hopkins University Press, 1996), pp. 70-126; idem, "Did Early Christians 'Lust After Death'? A New Wrinkle in the Doctor-Assisted Suicide Debate," *Christian Research Journal* (Spring, 1996):11-21; and idem, "The Significance of Inaccurate History in Legal Considerations of Physician-Assisted Suicide," in *Physician-Assisted Suicide: Ethical Positions, Medical Practices, and Public-Policy Options*, R. Weir, ed. (Bloomington: Indiana University Press [forthcoming, 1997]).

### I. Judge Reinhardt's first assumption

**A. Assumption:** Because the church promoted such a bleak view of life and such a glorious view of heaven, suicide became an increasingly strong temptation for early Christians.<sup>3</sup>

**B. Response:** There is no evidence of any Christian, during the period under consideration, committing suicide, in the ordinary sense of the word, in order to accelerate his entering heaven. Further, suicide was clearly condemned by the early church, but in terms that indicated that suicide was not a serious temptation or problem for members of the church.

### II. Judge Reinhardt's second assumption

**A. Assumption:** The type of suicide in question is martyrdom.<sup>4</sup>

**B. Response:** Martyrdom, prior to the legalization of Christianity, was a special situation involving state persecution of a specific religion. Martyrdom was not indicative of a general desire for death, but only for death at the hands of another for the sake of Christ, in imitation

<sup>3</sup>*Compassion in Dying v. Washington*, 79 F.3d 790, 808 (9th cir. en banc 1996).

<sup>4</sup>79 F.3d at 808. Judge Reinhardt states:

"The early Christians saw death as an escape from the tribulations of a fallen existence and as the doorway to heaven. 'In other words, the more powerfully the Church instilled in believers the idea that this world was a vale of tears and sin and temptation, where they waited uneasily until death released them into eternal glory, the more irresistible the temptation to suicide became.'" *Id.* (footnote number omitted).

<sup>5</sup>See 79 F.3d at 808.



of Christ's death. It was that which was "tempting." Death as a release from physical or mental suffering was not at issue. Hence, Christianity did not teach that one had a general right to control the end of one's own life, but to the contrary, that one was not permitted to do so. Denominating the acceptance of martyrdom for one's religious faith as a form of "suicide" is hopelessly confusing, and obscures rather than clarifies the issues related to physician-assisted suicide. Judge Reinhardt's thinking and terminology are so muddled that he is willing to consider Christians executed for their faith as "suicides," yet later in the same opinion he denies that those who *request* that their physicians kill them are "suicides."

Rather than promoting suicide as a solution for illness and physical pain, the early church emphasized the ethical obligations to care for the sick, and to patiently endure illness and suffering, that had been lacking in Greek and Roman ethics.

### III. Judge Reinhardt's third assumption

**A. Assumption:** The martyrdoms, predominantly of Donatists (a schismatic sect that arose nearly simultaneously with the legalization of Christianity), so threatened to deplete the ranks of Christendom that Augustine condemned suicide in general as a damnable sin. Prior to Augustine, the Church had failed clearly to condemn suicide.<sup>5</sup>

**B. Response:** There are several logical absurdities here:

1. If the church were to have adopted an anti-suicide stance because of utilitarian concerns with the ranks of Christendom being depleted by martyrdom, it surely

<sup>5</sup>See 79 F.3d at 808.

would have done so earlier, when Christians were a small minority, rather than during Augustine's lifetime when the church was being flooded with "converts" whose attraction to Christianity were the social and political advantages legally available to Christians.

2. If Augustine's concern was that the ranks of Christendom were being depleted by martyrdom and if these martyrs were Donatists, i.e., members of a schismatic sect, then allowing the practice to continue would have reduced the ranks of the very people who were the Catholic Church's greatest religious competition at that time.

3. Historically, the assumption that Augustine created a reversal of church teaching is false, as demonstrated both by the extensive quotation of pre-Augustinian sources cited herein, as well as by the fact that the Eastern, Greek-speaking Church, upon which Augustine's Latin writings had little influence, nonetheless clearly taught an anti-suicide position.

### ARGUMENT

#### I. Suicide was clearly condemned by the pre-Augustinian church, but in terms that indicated that suicide was not a serious temptation for Christians

Suicide is rarely mentioned in the New Testament. The only suicide recorded there is that of Judas (hardly a model of Christian virtue), and his self-destruction is reported without comment (Mt. 25:5; Acts 1:18). Suicide arises incidentally on some other occasions. When Jesus said, "Where I go, you cannot come," this made the Jews ask, "Will he kill himself?" (Jn. 8:21-22). Moreover, one suicide is prevented in the New Testament. Paul and Silas had been freed from prison in Philippi by an earthquake. When the jailer was about to kill himself in despair, Paul intervened by offering him salvation, which he joyfully accepted (Acts 16:25-34). In some cases of demon posses-

sion self-destructive tendencies are manifested, e.g., in Mark's accounts of the Gerasene demoniac (Mk. 5:5) and of the mute boy (Mk. 9:14-29). In the latter, the boy's father told Jesus that the demon had "often thrown him into the fire or water to kill him" (Mk. 9:22). The New Testament contains no other reference to potential or realized suicide.

Although suicide is a topic that excited little comment by church fathers before Augustine, one encounters passing references. An anonymous author of the *Shepherd of Hermas*, a work that was composed in stages between 90 and 150, contends that one who is harassed by distress (*incommoda*) should be assisted, for "many bring death on themselves by reason of such calamities when they cannot bear them. Whoever therefore knows the distress of such a man, and does not rescue him, incurs great sin and becomes guilty of his blood."<sup>6</sup> This suggests that the author held the suicide of one who resorted to such a deed because of distress as so serious a matter that whoever could have helped but failed to do so not only was guilty of a serious sin but of the suicide's blood.

Justin Martyr (ca. 100-165) envisages a pagan exclaiming, "All of you, go kill yourselves and thus go immediately to God and save us the trouble." Justin responds, "If . . . we should kill ourselves we would be the cause, as far as it is up to us, why no one would be born and be instructed in the divine doctrines, or even why the human race might cease to exist; if we do act thus, we ourselves will be opposing the will of God."<sup>7</sup> This occurs in juxtaposition to Justin's assertion of Christians' willingness to die for their faith. This passage, although it is an unequivocal condemnation of suicide for Christians, is only an explanation provided to pagans of why Christians

<sup>6</sup>"Similitude" 10.4.3, in *Shepherd of Hermas*, in AF 2:305.

<sup>7</sup>Justin Martyr, 2 *Apology* 4, in FC 6: 123.

do not kill themselves. Justin appears not to have felt it incumbent upon himself to provide any moral explanation or scriptural defense of his position. Although his argument is sufficiently Platonic to be familiar to educated pagans, it contains ingredients that even Platonists would find unpalatable: Christians must not kill themselves because God wants them in the world and humanity needs them, for if there were no Christians not only would there be no one to instruct pagans in the truth, but also since God sustains the world for his people's sake, the human race would cease to exist if all Christians were removed from the face of the earth.

A similar message is contained in the late second-century, anonymous *Epistle to Diognetus*:

The soul is locked up in the body, yet is the very thing that holds the body together; so, too, Christians are shut up in the world as in a prison, yet are the very ones that hold the world together. Immortal, the soul is lodged in a mortal tenement; so, too, Christians, though residing as strangers among corruptible things, look forward to the incorruptibility that awaits them in heaven. The soul, when stinting itself in food and drink, is the better for it; so, too, Christians, when penalized, increase daily more and more. Such is the important post to which God has assigned them, and it is not lawful for them to desert it.<sup>8</sup>

In the so-called Clementine *Homilies*, probably redacted to their present form in the mid-fourth century but based on a late second/early third-century original, the apostle Peter encounters a pagan woman who is considering killing herself because of various afflictions. He

<sup>8</sup>*Epistle to Diognetus*, in J. Quasten, *Patrology*, vol. 1, *The Beginnings of Patristic Literature* (1950; reprint, Westminster: Christian Classics, 1983), p. 251.



says to her, "Do you suppose, O woman, that those who destroy themselves are freed from punishment? Are not the souls of those who thus die punished with a worse punishment in Hades for their suicide?"<sup>9</sup> It is uncertain whether the conviction that suicide will compound one's future punishment was in the original or added by a fourth-century redactor.

Clement of Alexandria (ca.155-ca.220) viewed as a *praeparatio evangelica* those features of Greek philosophy that he regarded as consonant with divine revelation. He especially admired the Stoic concept of *apatheia* (insensibility to suffering). But in his thought the Stoic concept is so thoroughly informed by scriptural principles that the *apatheia* that he lauds as a Christian ideal could never reasonably lead to, much less justify, suicide:

[By] going away to the Lord [the Christian] does not withdraw himself from life. For that is not permitted to him. But he has withdrawn his soul from the passions. For that is granted to him. And on the other hand he lives, having put to death his lusts, and no longer makes use of the body, but allows it the use of necessities, that he may not give cause for dissolution [of the body].<sup>10</sup>

Clement's was a Stoicism that had been Christianized to such a degree that suicide was permitted neither in the active sense (i.e., "withdrawing from life," a popular Stoic expression for suicide) nor in the passive sense (i.e., allowing the dissolution of the body by failing to provide it with necessities).

Tertullian (ca.160-ca.220), commenting on Christ's having commanded his followers "to give to the one who asks," says that "if you take His command generally, you

<sup>9</sup>Clementine Homilies 12.14, in ANF 8:295.

<sup>10</sup>Clement, *Stromateis* 6.9, in ANF 2:497.

would be giving not only wine to a man with a fever, but also poison or a sword to one who wanted to die."<sup>11</sup> It was regarded as exceedingly harmful for the febrile to consume wine. Tertullian includes in the same category assisting one to commit suicide. A Christian simply will not supply the means if asked. In another work Tertullian classifies as demented or insane (possibly demon possessed) anyone who "cuts his own throat."<sup>12</sup>

There is no suggestion in the sources thus far surveyed that for contemporary Christians suicide either posed a theoretical, much less a practical, problem or was an attraction to them. Such will continue to be the case through the end of the patristic era.

Lactantius (ca.240-320), appointed professor of oratory in Nicomedia by the emperor Diocletian, and later converted to Christianity, resigned his position when the "Great Persecution" began in 303. He wrote his major apologetic work, the *Divine Institutes*, to persuade educated pagans of the truth of Christianity and to edify and encourage Christians who were troubled by philosophical attacks against their faith. Discussing various pagan philosophers, he says that many of them, "because they suspected that the soul is immortal, laid violent hand upon themselves, as though they were about to depart to heaven." He then asserts that

nothing can be more wicked than this. For if a homicide is guilty because he is a destroyer of man, he who puts himself to death is under the same guilt, because he puts to death a man. Yea, that crime may be considered to be greater, the punishment of which belongs to God alone. For

<sup>11</sup>Tertullian, *Flight in Time of Persecution* 13.2, in FC 40:304.

<sup>12</sup>Tertullian, *Apology* 23.3, in FC 10:71-72. See also *ibid.*, 46.14, 50.4-11; *To the Martyrs* 4.9; and Timothy D. Barnes, *Tertullian: A Historical and Literary Study* (Oxford: Clarendon, 1971), pp. 218-19.

as we did not come into this life of our own accord; so, on the other hand, we can only withdraw from this habitation of the body which has been appointed for us to keep, by the command of Him who placed us in this body that we may inhabit it, until He orders us to depart from it. . . . All these philosophers, therefore, were homicides.<sup>13</sup>

Some years later Lactantius yielded to requests to write an abridgement of the *Divine Institutes*. In his *Epitome* he asks whether we should approve those

who, that they might be said to have despised death, died by their own hands? Zeno, Empedocles, Chrysippus, Cleanthes, Democritus, and Cato, imitating these, did not know that he who put himself to death is guilty of murder, according to the divine right and law. For it was God who placed us in this abode of flesh: it was He who gave us the temporary habitation of the body, that we should inhabit it as long as He pleased. Therefore it is to be considered impious, to wish to depart from it without the command of God. Therefore violence must not be applied to nature. He knows how to destroy His own work. And if any one shall apply impious hands to that work, and shall tear asunder the bonds of the divine workmanship, he endeavors to flee from God, whose sentence no one will be able to escape, whether alive or dead. Therefore they are accursed and impious, whom I have mentioned above, who even taught what are the befitting reasons for voluntary death; so that it was not enough of guilt that they were self-murderers, unless they instructed others also to this wickedness.<sup>14</sup>

<sup>13</sup>Lactantius, *Divine Institutes* 3.18, in ANF 7:88-89.

<sup>14</sup>Lactantius, *Epitome* 39, in ANF 7:237.

In his *Divine Institutes* Lactantius condemns suicides as worse than homicides on the Christianized Platonic grounds that suicides desert the place to which God has appointed them. In his *Epitome* he adds the offenses of attempting to flee from God by committing violence against nature, and encouraging others to do likewise. In his second work his tone is even more vitriolic and outraged than in the first: suicides are not only homicides but are impious as well.

Lactantius' contemporary, Eusebius (ca.265-339), writes

It is worthy of note that, as the records show, in the reign of Gaius . . . Pilate himself, the governor of our Saviour's day, was involved in such calamities that he was forced to become his own executioner and to punish himself with his own hand: divine justice, it seems, was not slow to overtake him. The facts are recorded by those Greeks who have chronicled the Olympiads together with the events occurring in each.<sup>15</sup>

Eusebius clearly regarded Pilate's suicide from despair as God's just penalty, a condemnation for his sin of sentencing Jesus to death by crucifixion.

Eusebius quotes from the anti-Montanist work of Bishop Apolinarius of Hierapolis, written during the reign of Marcus Aurelius, the following account of the deaths of Montanus (the founder, in the late second century, of the charismatic and prophetic sect that bears his name) and one of his prophetesses, Maximilla:

It is thought that both of these were driven out of their minds by a spirit, and hanged themselves, at different times; and on the occasion of the death of each, it was said on all sides that

<sup>15</sup>Eusebius, *History of the Church* 2.7.1, p. 81 in Williamson's translation.



this was how they died, putting an end to themselves just like the traitor Judas. . . . But we must not imagine that without seeing them we know the truth about such things, my friend: it may have been in this way, it may have been in some other way, that death came to Montanus . . . and [his] female associate.<sup>16</sup>

Neither Eusebius nor his source would vouch for the accuracy of this account. Including it, however, they suggest death by suicide as appropriate for two whom they regarded as notorious heretics.

Basil of Caesarea (ca.329-379), in one of his "canonical letters" writes that a woman who has an abortion is guilty not only of the murder of the fetus but also of "an attempt against her own life, because usually the women die in such attempts."<sup>17</sup> It is obvious that Basil was speaking for and to a community that regarded even an attempt on one's own life as sinful.

John Chrysostom (349-407), writing on Galatians 1:4 (Jesus "gave himself for our sins to rescue us from the present evil world, according to the will of our God and Father"), castigates those dualistic heretics who viewed the material world as evil. He takes the words "evil world" to mean

evil actions, and a depraved moral principle. . . . Christ came not to put us to death and deliver us from the present life in that sense, but to leave us in the world, and prepare us for a worthy participation of our heavenly abode. Wherefore He saith to the Father, "And these are in the world, and I come to Thee; I pray not that Thou shouldest take them from the world, but that Thou shouldest keep them from the evil,"

<sup>16</sup>Ibid., 5.16.13 and 15, p. 220.

<sup>17</sup>Letters 188.2, in FC 2:12-13.

i.e., from sin. Further, those who will not allow this, but insist that the present life is evil, should not blame those who destroy themselves; for as he who withdraws himself from evil is not blamed, but deemed worthy of a crown, so he who by a violent death, by hanging or otherwise, puts an end to his life, ought not to be condemned. Whereas God punishes such men more than murderers, and we all regard them with horror, and justly; for if it is base to destroy others, much more is it to destroy one's self.<sup>18</sup>

Chrysostom thus asserts that dualistic heresy encourages suicide. True Christians — "we all" would be the orthodox community — according to Chrysostom justly regard suicide with horror. Such a statement would be preposterous if there had been any sympathy within the orthodox community with suicide to escape "the present evil world."

Augustine's erstwhile mentor, Ambrose (ca.339-97), says of Paul's statement "For to me, to live is Christ and to die is gain" (Phil. 1:21):

For Christ is our king; therefore we cannot abandon and disregard His royal command. How many men the emperor of this earth orders to live abroad in the splendor of office or perform some function! Do they abandon their posts without the emperor's consent? Yet what a greater thing it is to please the divine than the human! Thus for the saint "to live is Christ and to die is gain." He does not flee the servitude of life like a slave, and yet like a wise man he does embrace the gain of death.<sup>19</sup>

<sup>18</sup>John Chrysostom, *Commentary on Galatians* 1:4, in NPNF-1, 13:5.

<sup>19</sup>Ambrose, *Death as a Good* 3.7, in FC 65:73-74.



Once again we see a Christianized form of the Platonic argument against suicide. Elsewhere Ambrose writes to his sister Marcellina,

You make a good suggestion that I should touch upon what we ought to think of the merits of those who have cast themselves down from a height, or have drowned themselves in a river, lest they should fall in the hands of persecutors, seeing that holy Scripture forbids a Christian to lay hands on himself.<sup>20</sup>

It is very significant that Ambrose simply states that Scripture forbids suicide and does not seem to feel compelled to defend that contention. He speaks with the same degree of confidence that his audience will agree as does Chrysostom when he says, "we all regard suicides with horror, and justly."

In a letter to the lady Paula, who was distraught over the death of her daughter Blaesilla, Jerome (ca.345-ca.419) asks,

Have you no fear, then lest the Savior may say to you: "Are you angry, Paula, that your daughter has become my daughter? Are you vexed at my decree, and do you, with rebellious tears, grudge me the possession of Blaesilla? You ought to know what my purpose is both for you and for yours. You deny yourself food, not to fast but to gratify your grief, and such abstinence is displeasing to me. Such fasts are my enemies. I receive no soul which forsakes the body against my will. A foolish philosophy may boast of martyrs of this kind; it may boast of a Zeno, a Cleombrotus, or a Cato. My spirit rests only upon him 'that is poor and of a contrite

<sup>20</sup>Ambrose, *Concerning Virgins* 3.7.32, in *NPNF-2*, 10:386.

spirit and that trembleth at my word' [Is. 66:2]."<sup>21</sup>

Jerome qualifies this apparently unlimited condemnation of suicide elsewhere: "It is not ours to lay hold of death, but we freely accept it when it is inflicted by others. Hence, even in persecutions it is not right for us to die by our own hands, except when chastity is threatened, but to submit our necks to the one who threatens."<sup>22</sup>

Both Ambrose and Jerome make one exception to their otherwise inclusive condemnation of suicide: if it is done for the preservation of chastity. Only a small minority of patristic sources prior to Augustine mention this category of suicide; those that do, approve it.<sup>23</sup> Augustine's rejection of the probity of suicide to preserve chastity led him to engage in a thorough analysis of suicide in book one of the *City of God*. The first installment of this massive work was published in 414, four years after the Goths' sack of Rome.

## II. The early church emphasized an obligation of care for the sick and the patient endurance of suffering, rather than suicide, as the appropriate response to illness

Christianity not only condemned pagan immorality but it also introduced moral obligations that were altogether foreign to the Greek and Roman ethos. One of

<sup>21</sup>Jerome, *Letters* 39.3, in *NPNF-2*, 6:51.

<sup>22</sup>Jerome, *Commentarius in Ionam prophetam* 1.6, in *Patrologia cursus completus, Series Latina*, Jacques Paul Migne, ed. (Paris: J. P. Migne, 1844-65) 1.12:390-91 (my translation).

<sup>23</sup>See also Eusebius, *History of the Church* 8.12.3-4, 8.14.14 and 17, and Chrysostom, *Homilia encomastica*, in *Patrologia cursus completus, Series Graeco-Latina*, Jacques Paul Migne, ed. (Paris: J. P. Migne, 1857-66), 49:579-84.

these was a duty to care — not a duty to cure,<sup>24</sup> but a duty to care — an obligation to extend practical compassion to the destitute, the widow, the orphan, and the sick. This introduced a truly radical transformation in attitudes toward the sick. Henry Sigerist has observed that Christianity inaugurated

the most revolutionary and decisive change in the attitude of society toward the sick. Christianity came into the world . . . as the joyful Gospel of the Redeemer and of Redemption. It addressed itself to the disinherited, to the sick and the afflicted. . . . It became the duty of the Christian to attend to the sick and poor of the community. . . . The social position of the sick man thus became fundamentally different from what it had been before. He assumed a preferential position which has been his ever since.<sup>25</sup>

Although early Christians lived in a secular milieu in which suicide by the ill was frequently practiced and its probity seldom questioned,<sup>26</sup> not only is there no discussion of the issue in patristic literature but there is also not a single example of Christians committing suicide, asking others' assistance in doing so, or requesting others to kill them directly, in order to escape from the grinding tedium of chronic, or the severe suffering of termi-

<sup>24</sup>See the compelling study by Gary B. Ferngren, "Early Christianity as a Religion of Healing," *Bulletin of the History of Medicine* 66 (1992): 1-15.

<sup>25</sup>Henry Sigerist, *Civilization and Disease* (Chicago: University of Chicago Press, 1943), pp. 69-70. Sigerist was an avowed Marxist and no apologist for Christianity. See *Henry E. Sigerist: Autobiographical Writings*, selected and translated by Nora Sigerist Beeson (Montreal: McGill University Press, 1966), p. 110.

<sup>26</sup>See Danielle Gourevitch, "Suicide among the Sick in Classical Antiquity," *Bulletin of the History of Medicine* 43 (1969): 501-18, and van Hooff, *From Autothanasia to Suicide*, especially pp. 122-26.

nal, illness. The only ethical issues raised by illness in patristic literature are 1) the tendency of some Christians to seek medical care without first pondering the spiritual dimensions of their suffering; 2) their having recourse to pagan or magical healing alternatives; and 3) their occasionally frantic struggles to find and cling to any even meager hope of recovery. Not only is suicide by the ill never raised as an ethical issue in the literature of early Christianity but also there is not a scintilla of evidence that the preferential position that Christianity gave to the sick included an expedited "final exit." The goodness and sovereignty of God and the patient endurance of affliction are so regularly and consistently stressed in patristic theology that it is not surprising that patristic texts are void of any reference to suicide by the ill.

### III. Judge Reinhardt's illogical and inaccurate statements about suicide and the early church are rooted in an academic ideology that deliberately blurs the distinction between being martyred for one's beliefs and committing suicide to avoid suffering

In his treatment of the early history of suicide, Judge Reinhardt relied primarily upon a popularized account written by poet, literary critic, and playwright, Alfred Alvarez.<sup>27</sup> The historical and theological presuppositions and conclusions of Alvarez are consistent with those of some philosophers, sociologists, anthropologists, psychologists, and popular authors who have written, even incidentally, on suicide in early Christianity during the last several decades. Alvarez's understanding of suicide in

<sup>27</sup>Judge Reinhardt's quotations are from Alvarez's "The Background," in *Suicide: The Philosophical Issues*, M. P. Battin and D. J. May, eds. (New York: St. Martin's, 1980), pp. 7-32, which is chapter one of Alvarez's very influential book, *The Savage God: A Study of Suicide* (New York: Random House, 1970).



early Christianity suggests not only an ignorance of early Christian theology and history but also the conceptual influence of Émile Durkheim, the father of academic sociology in France.<sup>28</sup>

Durkheim's definition of suicide is very well known to students of the social sciences: "All cases of death resulting directly or indirectly from a positive or negative act of the victim himself, which he knows will produce this result."<sup>29</sup> Durkheim was determined to avoid the question of motivation or even whether the individual actually desired to die. It is suicide if one believes that one's actions or passivity will eventuate in one's own death. Hence, he classifies the death of Christian martyrs as (altruistic) suicide, since they

without killing themselves, voluntarily allowed their own slaughter. . . . Though they did not kill themselves, they sought death with all their power and behaved so as to make it inevitable. To be suicide, the act from which death must necessarily result need only have been performed by the victim with full knowledge of the facts.<sup>30</sup>

According to Durkheim, dying for one's beliefs is suicide. Since those who commit suicide are, in Durkheim's construct, victims of pathological social phenomena, martyrs are victims not of the people who kill them but of their own religious group's demand for excessive integration, control, and regimentation.

Arthur J. Droge and James D. Tabor begin and end their recent work, *A Noble Death: Suicide and Martyrdom*

<sup>28</sup>Émile Durkheim, *Suicide: A Study in Sociology*, J. A. Spaulding and G. Simpson, trans. (Glencoe, Ill.: The Free Press, 1951).

<sup>29</sup>*Ibid.*, p. 44.

<sup>30</sup>*Ibid.*, p. 227; cf. p. 67.

*among Christians and Jews in Antiquity*,<sup>31</sup> by referring to the current debate regarding physician-assisted suicide. Unfortunately, Droge and Tabor adopt terminology which they concede to be quite similar to Durkheim's. Rejecting for their purposes the word suicide as "a recent innovation and pejorative term," they substitute the designation "voluntary death," which they define as

the act resulting from an individual's intentional decision to die, either by his own agency, by another's, or by contriving the circumstances in which death is the known, ineluctable result.

Droge and Tabor's determination to label such a diverse variety of motives and actions "voluntary death" entangles them in contradictions and absurdities. For example, when dealing with the Old Testament, Droge and Tabor comment on Elijah's request that God take his life (1 Kings 19:4-5): "Though no act of self-destruction is involved, we might term this a 'voluntary departure' or perhaps even a 'voluntary death.'"<sup>32</sup> Aaron's "death is voluntary in the sense that he submitted to God's decision" that it was time for him to die!<sup>33</sup> They speculate that "whether Moses himself took a hand in his own death or not is left unclear, though it might well be implied," and then say, "The point we want to emphasize here is that the distinctions tend to be blurred between a request that God take one's life, God's determining the time of death, and one's taking a hand to carry out such a choice or decision."<sup>34</sup>

<sup>31</sup>Arthur J. Droge and James D. Tabor, *A Noble Death: Suicide and Martyrdom among Christians and Jews in Antiquity* (San Francisco: Harper, 1992).

<sup>32</sup>*Ibid.*, pp. 61-62.

<sup>33</sup>*Ibid.*, p. 62.

<sup>34</sup>*Ibid.*, p. 63.



**IV. Debates within the early church about martyrdom and appropriate responses to religious persecution demonstrate that the church rejected the right of the individual to end his or her life to avoid illness<sup>35</sup>**

Christians have reacted to persecution in four different ways: 1) apostatizing; 2) fleeing; 3) accepting whatever penalties that were inflicted, including death; and 4) volunteering for or provoking martyrdom. The first of these was always condemned and the third always approved during the patristic period.<sup>36</sup> The second and the fourth were much more problematic and evoked considerable disagreement within the Christian community especially between rigorists and moderates.

The preponderance of known cases of martyrdom that occurred before the legalization of Christianity in 313 are of those who did not actively seek martyrdom but, when arrested, were martyred rather than apostatize, or who, as spectators of others who were being interrogated, tortured, or executed, identified themselves as Christians and suffered the consequences.<sup>37</sup>

<sup>35</sup>The numerous issues that make the subject of martyrdom in early Christianity complex are only tangential to our present concerns and, hence, must not detain us here. There is a continually expanding literature on martyrdom and persecution in early Christianity. Still the most authoritative and reliable treatment is W. H. C. Frend, *Martyrdom and Persecution in the Early Church* (Oxford: Blackwell, 1965).

<sup>36</sup>Some groups that were peripheral to the orthodox community, e.g., the Gnostics, maintained that apostasy — even a cavalier denial of one's beliefs — was acceptable if death were the alternative, since what one said under duress was irrelevant to the condition of one's heart. The reaction of the orthodox community to such a perspective was unequivocally condemnatory.

<sup>37</sup>This is not to say that there were not some who actively sought to provoke pagans to martyr them. *Indisputable* examples of such, however, are extremely rare. Droge and Tabor are hard pressed to provide many except by the most contorted hermeneutical gymnastics,

There is an even greater scarcity of recorded instances of those who actively took their own lives as a means of martyrdom. The extremely small number of Christians who are recorded as actively taking their own lives before the legalization of Christianity in 313 did so only under extreme duress. There are three categories:

1. Those who killed themselves to avoid being arrested and subjected to extreme suffering. Only one instance appears in the sources. It is recorded by Eusebius (ca. 265-339) and occurred during the "Great Persecution" (303-312):

Need I rekindle the memory of the martyrs at Antioch, who were roasted over lighted braziers, not roasted to death but subjected to prolonged torture? Or of others who plunged their hands right into the fire sooner than touch the abominable sacrifice? Some of them were unable to face such a trial, and before they were caught and came into the hands of their would-be destroyers, threw themselves down from the roofs of tall houses, regarding death as a prize snatched from the scheming hands of God's enemies.<sup>38</sup>

Eusebius records this incident with neither approval nor disapproval. As we shall see below, Ambrose (ca. 339-97) implicitly and Jerome (ca. 345-ca. 419) explicitly condemn suicide to avoid the tortures that typically attended martyrdom.<sup>39</sup> Both, however, were born decades after the legalization of Christianity, but Eusebius lived through the "Great Persecution." This may suggest why the latter does

tics, and their claim that most Christian martyrs deliberately volunteered or died by their own hand is entirely unsubstantiated.

<sup>38</sup>*The History of the Church from Christ to Constantine*, G. A. Williamson, trans. (New York: Penguin, 1965), 8.12.2 (p. 342).

<sup>39</sup>Ambrose, *Concerning Virgins* 3.7.32; Jerome, *Commentarius in Ionam prophetam* 1.6.

not condemn the act. Augustine (354-430) was extremely thorough in his various analyses of suicide. Yet he makes no reference to this category of self-killing although he appears to have scoured both pagan and Christian literature for references to suicide. Hence, it is reasonable to conclude that such types of suicide by Christians had occurred very rarely while Christians were still a persecuted minority.

2. Those who had already been arrested but dramatically ended their lives before being executed. Two examples are recorded by Eusebius: The first occurred in Alexandria in 249 under Decius:

Next they seized the wonderful old lady Apollonia, battered her till they knocked out all her teeth, built a pyre in front of the city, and threatened to burn her alive unless she repeated after them their heathen incantations. She asked for a breathing-space, and when they released her, jumped without hesitation into the fire and was burnt to ashes.<sup>40</sup>

The second was during the "Great Persecution":

There was a conflagration in the palace at Nicomedia, and through a groundless suspicion word went round that our people were responsible. By imperial command God's worshippers there perished wholesale and in heaps, some butchered with the sword, others fulfilled [*teleiō* = perfected, made perfect or complete] by fire; it is on record that with an inspired and mystical fervour men and women alike leapt on to the pyre.<sup>41</sup>

<sup>40</sup>Eusebius, *History of the Church* 6.41.7, p. 276 in Williamson's translation.

<sup>41</sup>Ibid., 8.6.6, p. 334.

3. Virgins and married women who committed suicide to avoid defilement. The earliest examples appear to be from the "Great Persecution." Nearly a century after the legalization of Christianity, Rome was captured and ravaged by Alaric and his Goths who raped pagan and Christian women alike. Some Christian women committed suicide to preserve their chastity. It is a consideration of such suicides that prompted Augustine to write a lengthy but diversionary discussion of suicide in book one of his *City of God*.

The fact that the early church was sometimes ambivalent about the act of killing oneself to avoid extreme physical torture during state persecution, or killing oneself to preserve chastity in the face of immanent ravishing by barbarians, hardly demonstrates a generalized acceptance of suicide. Indeed, the terms in which the early church debated issues related to martyrdom demonstrates an implicit rejection of an individual right to suicide. All Christians held that martyrdom was the most perfect display of love toward God and was to be desired above any other form of death. Never could any other form of death provide the spiritual glory and rewards that martyrdom guaranteed. Accordingly, for moderates (a strong majority in our sources), who condemned seeking or provoking martyrdom, *the very basis for their condemnation of actively contriving that one most coveted form of death would eo ipso preclude 1) their approving of one's intentionally ending one's own life through some lesser means, much less 2) their formulating a theological justification for taking one's own life by one's own hand.* For rigorists (a minority in our sources), who approved of volunteering for martyrdom, *any form of death, including suicide, would be an obstacle to that one most cherished form of death, martyrdom.* Hence, it is not surprising that *in the entirety of extant patristic literature written before the legalization of Christianity, there is not even*



one recorded instance of Christians' committing suicide after having failed to provoke pagans to martyr them.

**V. Augustine's rejection of suicide was based upon the same presuppositions and values that had caused the earlier church fathers to condemn suicide**

In sections 16-28 of book one of the *City of God* Augustine condemns the following motivations for suicide: 1) to avoid or escape from temporal problems; 2) to avoid or escape from another's sinful actions (including doing so to preserve chastity); 3) because of guilt over past sins; 4) because of a desire for heaven; and 5) to avoid sinning. If there were any conceivably justifiable cause for suicide, Augustine says, it would be the last, but yet even the sin of such a well-motivated suicide would be greater than any sin that one might avoid by killing oneself. The basis of his condemnation of suicide in book one of the *City of God* is fourfold:

1. Scripture does not expressly permit, much less command, suicide as a means of achieving heaven or as a way to escape or avoid evil.
2. A prohibition of suicide is explicit in the sixth commandment.
3. Since no private party has the authority to kill a criminal who deserves capital punishment, those who kill themselves are homicides.
4. Suicide allows no opportunity for repentance.

His only reference to martyrdom in this digression on suicide is his refutation of pagan approval of suicide to avoid captivity. He argues that the patriarchs, prophets, and apostles did not commit suicide to escape persecution or martyrdom. About a decade before he published the first installment of the *City of God*, Augustine had devoted some attention to martyrdom, not that of Catholics persecuted by pagans, but rather to the courting of

martyrdom by, and, when unsuccessful, the theatrically spectacular suicides of, members of a schismatic group, the Donatists.<sup>42</sup>

The Donatist movement (named after its earliest leader, Donatus) had been formed in the early fourth century by rigorists who condemned the church's accepting back into fellowship those who had apostatized during the "Great Persecution." Donatists viewed themselves as upholders of the purity of discipline in the face of Catholic "compromise with the world" that they viewed as having worsened since the legalization of Christianity. From its very beginning, the movement was a thorn in the flesh for the Catholic leadership. Persecution of the Donatists by the Catholic Church and by the imperial government began in 317. Finally, in 415, the death penalty was enacted for those Donatists who continued to assemble. It was especially then that some Donatists, primarily a fringe group known as the Circumcellions, increased their indiscriminate as well as systematic acts of violence against Catholics (even once attempting to ambush and kill Augustine) and their provoking the authorities to put them to death. Some Donatists staged sensationalistic suicides as well.

Intermittently, for nearly twenty years, Augustine composed anti-Donatist treatises. A frequent focus of these was the Donatists' attitude toward and practice of suicide. Space permits only a brief summary of the major themes in his anti-Donatist writings that do not occur in his digression on suicide in book one of the *City of God*:

1. Provoking martyrdom is a form of suicide and hence a sin.
2. "Heroic" suicide by those who are unable to provoke others to martyr them is a sin.

<sup>42</sup>On the Donatist movement see W. H. C. Frend, *The Donatist Church* (Oxford: Clarendon, 1952).



3. The Donatists' suicides violate the foundational Christian principle of patient endurance. This argument is presented in one of his last anti-Donatist writings (*Letters* 204, composed in 420).

In 415 Augustine had written a treatise entitled *De patientia*, in which, without specifically naming the Donatists, he chides them with the example of Job's endurance.<sup>45</sup> Patient endurance will prove to be the climax of Augustine's final statement on the subject of suicide, in book 19 of the *City of God*, published in 426 or 427.

The theme of patient endurance was, of course, not unique to Augustine. Even a casual reading of the church fathers shows that they saw suffering as an essential component of God's sanctifying work. This conviction, coupled with a firm belief in divine sovereignty, and an equally firm confidence that God does all things for the ultimate good of his people engendered in them a sense of responsibility to preach and practice endurance in the face of all afflictions. An outstanding, but not atypical, example is Cyprian (ca.200-258). Writing to his fellow Christians while the city was being ravaged by plague, he comments on the phenomenon that some of them were troubled because this

disease carries off our people equally with the pagans, as if a Christian believes to this end, that, free from contact with evils, he may happily enjoy the world and this life, and, without having endured all adversities here, may be preserved for future happiness. . . . But what in this world do we not have in common with others as long as this flesh . . . still remains common to us?

As examples he gives famine, the devastation of war, drought, shipwreck, "and eye trouble and attacks of fever

<sup>45</sup>Augustine, *Letters* 13.10, in *FC* 16:246.

and every ailment of the members we have in common with others as long as this common flesh is borne in the world."<sup>44</sup> He reminds his readers that this

endurance the just have always had; this discipline the apostles maintained from the law of the Lord, not to murmur in adversity, but to accept bravely and patiently whatever happens in the world. . . . We must not murmur in adversity, beloved brethren, but must patiently and bravely bear with whatever happens.<sup>45</sup>

Hence, "the fear of God and faith ought to make you ready for all things," such as loss of possessions, sickness, loss of loved ones. So

let not such things be stumbling blocks for you but battles; nor let them weaken or crush the faith of the Christian, but rather let them reveal his valor in the contest, since every injury arising from present evils should be made light of through confidence in the blessings to come. . . . Conflict in adversity is the trial of truth.<sup>46</sup>

Cyprian consistently emphasizes the activity of God and the passivity of Christians in death. He asserts that Christians who died of the current plague "have been freed from the world by the summons of the Lord."<sup>47</sup> Later he avers that "those who please God are taken from here earlier and more quickly set free, lest, while they are tarrying too long in this world, they be defiled by contacts with the world." He then advises that "when the day of our own summons comes, without hesitation but with gladness we may come to the Lord at His call." For "rescued by an earlier departure, you are being freed from

<sup>44</sup>Cyprian, *Mortality* 8, in *FC* 36:204-5.

<sup>45</sup>*Ibid.*, 11, p. 207.

<sup>46</sup>*Ibid.*, 12, p. 208.

<sup>47</sup>*Ibid.*, 20, p. 215.

ruin and shipwrecks and threatening disasters!" Hence, "Let us embrace the day which assigns each of us to his dwelling, which on our being rescued from here and released from the snares of the world, restores us to paradise and the kingdom." He encourages them to consider their loved ones already in heaven and the joys that await them there. "To these, beloved brethren, let us hasten with eager longing! Let us pray that it may befall us speedily to be with them, speedily to come to Christ."<sup>48</sup>

It is God who calls; it is He who issues the summons. God takes Christians from the world; God frees them; God rescues them; God releases them; God restores them to heaven. Christians are passive — they *are being* freed; they *are being* rescued; they *are being* released; they *are being* restored. It is God who is the active party. Christians are to yearn for heaven and to pray for an early departure from life. Yearning for death and praying to die are categorically different from taking one's own life. There is no room here for suicide. Patient endurance of all afflictions, perseverance to the end, final resignation to God's will in the midst of those very circumstances that God is using to test and refine the Christian: such thought is antithetical to the taking of one's own life. And such thought permeates patristic literature.

Did Augustine formulate the Christian position on suicide? The answer must be an unequivocal "no." He based his condemnation of suicide most fundamentally on the same presuppositions and values that had caused the earlier church fathers to condemn the act. Recall the terms with which they had condemned it: it is opposed to the will of God (Justin); it is not lawful (*Epistle to Diognetus*); suicides are punished more severely than others (Clementine *Homilies*); it is not permitted (Clement); God punishes suicides more than homicides and we all justly re-

<sup>48</sup>Ibid., 26, pp. 220-21.

gard them with horror (John Chrysostom); nothing can be more wicked than suicide (Lactantius); the sin of abortion is compounded by the dangers of the procedures that render it virtually an act of attempted suicide (Basil); Christ will not receive the soul of a suicide (Jerome); Scripture forbids Christians to lay hands on themselves (Ambrose). Augustine was simply the first Christian on record to discuss the issue thoroughly, although a century earlier Lactantius had already devoted several pages of his *Divine Institutes* to suicide and then amplified his treatment of the subject in his *Epitome*.

## CONCLUSION

Although Judge Reinhardt is eager to regard early Christian martyrs as suicides, he balks at the use of the expression "physician-assisted suicides":

a. "While some people refer to the liberty interest implicated in right-to-die cases as a liberty interest in committing suicide, we do not describe that way. We use the broader and more accurate terms, 'the right to die,' 'determining the time and manner of one's death,' and 'hastening one's death' for an important reason. The liberty interest we examine encompasses a whole range of acts that are generally not considered to constitute 'suicide.'"<sup>49</sup>

b. "... we are doubtful that deaths resulting from terminally ill patients taking medication prescribed by their doctors should be classified as 'suicide.' . . . . We believe that there is a strong argument that a decision by a terminally ill patient to hasten by medical means a death that is already in process, should not be classified as suicide. Thus, notwithstanding the generally accepted use of the term 'physician-assisted suicide,' we have seri-

<sup>49</sup>*Compassion in Dying*, 79 F.3d at 802.

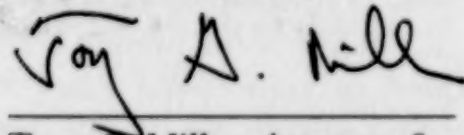


ous doubt that the state's interest in preventing suicide is even implicated in this case."<sup>50</sup>

Nevertheless, to Judge Reinhardt martyrs are suicides. The Reverend Martin Luther King, Jr. asserted, "He who has nothing for which he is willing to die is not fit to live." Was King's refusal to stop his work in the face of death threats suicidal? Durkheim, Alvarez, and, apparently, Judge Reinhardt would respond in the affirmative. The former two would almost certainly regard one's taking of a lethal dose of medication in the face of terminally illness as suicide. Judge Reinhardt would not.

In short, Judge Reinhardt's treatment of the issue of suicide in early Christianity is so historically and conceptually muddled as to be fundamentally inaccurate.

Respectfully submitted,



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<sup>50</sup>Ibid., at 824.



## **APPENDIX**

**Abbreviations**

- AF.* *Apostolic Fathers*, K. Lake, trans. (Cambridge: Harvard University Press, 1912-13)
- ANF.* *Ante-Nicene Fathers*, [various translators] ([various dates]; reprint, Grand Rapids: Eerdmans, 1951)
- FC.* *Fathers of the Church*, [various translators] (Washington, D.C.: Catholic University of America, 1948-)
- NPNF-1.* *Select Library of Nicene and Post-Nicene Fathers of the Christian Church*, [various translators], 1st ser. ([various dates]; reprint, Grand Rapids: Eerdmans, 1976-79)
- NPNF-2.* *Select Library of Nicene and Post-Nicene Fathers of the Christian Church*, [various translators], 2d ser. ([various dates]; reprint, Grand Rapids: Eerdmans, 1976-79)